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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,625	10/23/2003	Michel Therin	1600-25 (BR040489)	5931
Peter DeLuca Carter, DeLuca, Farrell & Schmidt, LLP 445 Broad Hollow Road, Suite 420 Melville, NY 11747			EXAMINER TYSON, MELANIE RUANO	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 09/07/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/690,625

Applicant(s)

THERIN ET AL.

Examiner

MELANIE TYSON

Art Unit

3773

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1,3-6,8-11,14,15, and 19-24 is/are pending in the application.
- 5a) Of the above claim(s) 19-23 is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1,3-6,8-11,14,15 and 24 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB-005)
Paper No(s)/Mail Date ____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 June 2011 has been entered. The amendments made to the claims do not place the application in condition for allowance for the reasons set forth below. Claims 2, 7, 12, 13, and 16-18 remain cancelled and claims 19-23 remain withdrawn from consideration.

Response to Arguments

Applicant's arguments with respect to claims 1, 3-6, 8-11, 14, 15, and 24 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 15, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Hinsch et al. (U.S. Patent No. 6,162,962). Hinsch discloses a composite prosthesis for reinforcement of a tissue structure (see entire document) comprising a porous textile support that includes an arrangement of threads each

composed of filaments of non-absorbable polymer material (polyester; for example, see column 2, lines 23-25 and column 3, lines 44-59) forming a knitted structure (for example, see Figure 10), the textile support having at least one protected zone (the coated side of the support) and at least one nonprotected zone (the uncoated side of the support; see for example, see column 3, lines 35-42), wherein the microporous texture of the protected zone is occluded by a hydrophilic absorbable film (for example, see column 9, lines 50-54) that envelopes and penetrates the threads, the microporous texture in the nonprotected zone is not occluded (since the side is not coated with a film), a portion of the macroporous texture in the protected zone is occluded, and a portion of the macroporous texture in the protected zone is not occluded (for example, see Figures 10 and 11 in which the center macropore is occluded which the ones to either side and above and below are not occluded).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 4, 5, 8-10, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hinsch et al.

Regarding claims 4 and 5, Hinsch fails to disclose the thickness of the film. However, Hinsch suggests the rate of resorption may be modified as desired, In which case the thickness of the film may be modified as desired to achieve the desired absorption rate. To modify the thickness of the film to that of less than or equal to 500 microns, or from 10-100 microns would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art.

Regarding claims 8-10, Hinsch fails to disclose the final shape of the textile support. However, different tissues have different shapes. It is well within the general skill of a worker in the art to modify the shape of the support as desired to properly support the shaped tissue on which the support is to be utilized. Therefore, it would have been an obvious matter of design choice to modify Hinsch's prosthesis to obtain the shapes recited in claims 8-10.

Regarding claim 14, Hinsch fails to disclose the absorbable material comprises those recited. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the absorbable material from the group formed by collagens, polysaccharides, and their mixtures, since it has been held

to be within the general skill of a worker to select a known material on the basis of its suitability for the intended use as a matter of design choice.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hinsch et al. as applied to claim 1 above, and further in view of Landgrebe et al. (EP 0774240 A1).

Hinsch discloses the claimed invention except for a prosthesis having nonparallel edges and a bulged central region. Landgrebe discloses a strip (Figure 1, not labeled) having nonparallel edges (top edge 2 and bottom edge not labeled). Figure 1 shows the device is bulged in the central region (1) and narrower at the ends (5, 6, 7, and 8). This configuration allows the device to support a wide surface area of an organ (bladder; column 1, lines 45-47), thus contributing to a reliable treatment of incontinence in cases of extreme weakness of the pelvic floor with prolapsing anatomical displacement of the organs of the lesser pelvis (column 1, lines 33-39). Therefore, to construct Hinsch's prosthesis having nonparallel edges and a bulge as taught by Landgrebe would have been obvious to one of ordinary skill in the art at the time the invention was made in order to support prolapsed structures on a large surface area.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571) 272-9062. The examiner can normally be reached on Monday through Thursday 8-7 (IFP).

If attempts to reach the examiner by telephone are unsuccessful, please contact the examiner's supervisor, Corrine McDermott, at (571) 272-4754. The fax phone

Art Unit: 3773

number for the organization where this application or proceeding is assigned is 571-273-8300.

If there are any inquiries that are not being addressed by first contacting the Examiner or the Supervisor, you may send an email inquiry to TC3700_Workgroup_D_Inquiries@uspto.gov.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie Tyson/
Primary Examiner, Art Unit 3773
September 6, 2011